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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

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DIRECTOR

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Welcome to this edition of GovDelivery

Hopefully you are enjoying our beautiful Michigan Autumn. In addition to some notable case briefs, this edition of Gov Delivery contains a couple reminders of some common omissions –

Recent Appellate Opinions

Dunchock v City of Corunna, unpublished per curiam opinion of the Court of Appeals, issued September 10, 2019 (Docket No. 343265).

Petitioner appealed the Tribunal's Order of Dismissal, which dismissed the case because Petitioner was not a party in interest. Petitioner's wife and his corporation owned a parcel of land. The Michigan Department of Treasury secured a foreclosure on that land in February 2017. In March 2017, Petitioner petitioned the Board of Review, contesting the assessed and taxable values. Because the properties were not redeemed, absolute title vested with the state on March 31, 2017. Petitioner argued that the issue was one of standing. The Court explained that the relevant statute was MCL 205.735a(6), which required a petitioner to be a "party in interest," and that the common law doctrines of standing and real party in interest were inapplicable. Petitioner did not own the properties as of March 31, 2017 and thus did not have an interest. Petitioner also argued that the foreclosure was an unconstitutional taking. The Court explained that the Tribunal lacked jurisdiction to rule on constitutional issues such as takings claims.

Pergament v City of Oak Park, unpublished per curiam opinion of the Court of Appeals, issued September 12, 2019 (Docket No. 344250).

Petitioner appealed the Tribunal's Final Opinion and Judgment upholding the subject property's assessment for the 2017 tax year. In 2014, Petitioner purchased the subject property. Petitioner demolished the existing home in 2015 and constructed a new home, which was completed in 2016. Petitioner argued that the Tribunal incorrectly calculated the 2017 taxable value because his build cost was the true cash value of new construction for purposes of MCL 211.27a(2). The Court stated that Petitioner had provided no authority that true cash value was the same as build cost. The Tribunal's conclusion of true cash value was supported by Respondent's cost-less-depreciation approach. This approach was tailored to value property with new construction. The Tribunal also properly rejected Petitioner's sales comparison evidence because he failed to adjust for differences in features.



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Kovalic v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued September 12, 2019 (Docket No. 345171).

Petitioners appealed a Final Opinion and Judgment that denied a Principal Residence Exemption ("PRE") because they were not owners of the subject property. Petitioners and another couple jointly owned two properties, Parcel A and Parcel B. Petitioners' home was located on Parcel B. In 1978, Petitioners quitclaimed their interest in Parcel A to the other couple. That deed was not recorded, however, until 2011. When the other couple recorded the deed in 2011, a mistake at the register of deeds resulted in the deed conveying Parcel B instead of Petitioner's interest in Parcel A. Petitioners and the other couple also jointly owned a 34 acre parcel that was adjacent to Parcel B. In 2011, the other couple attempted to convey their interest in the 34 acre parcel to their living trust, but the warranty deed did not indicate that Petitioners had an interest in that parcel. Petitioner attempted to claim a PRE on the 34 acre parcel and Parcel B for 2013-2016, but were denied because they had no ownership interest in either parcel. In 2017, the other couple attempted to correct the issue by conveying an undivided one-half interest in the 34 acre parcel and Parcel B to Petitioners. Petitioner argued that a patent ambiguity existed on the deed conveying parcel B to the other couple and a latent ambiguity existed on the deed conveying the 34 acre parcel. Petitioner also argued that the 2017 deeds made them retroactively eligible for a PRE. The Court held that the 2011 deed conveying Parcel B was not patently ambiguous because the deed, on its face, conveyed Parcel B. Evidence extrinsic to the deed would have been necessary to show the ambiguity and extrinsic evidence is not admissible to show a patent ambiguity. As to the 34 acre parcel, the evidence suggested that the deed contained a mistake in that it should have included that Petitioner's had an ownership interest. However, the Court stated, a mistake is not an ambiguity. The 2011 deed specifically stated that the other couple conveyed the 34 acre parcel to their living trust and there was no other plausible interpretation. The Court also noted that, by asking the Tribunal to consider whether the deeds contained ambiguities, Petitioners asked it to engage in contract interpretation. Contract interpretation is not a question of tax law and thus not within the Tribunal's jurisdiction. The Tribunal could only consider whether Petitioners qualified for a PRE. Because Petitioners failed to show that they owned either parcel, the Tribunal did not err when it denied the PRE. Last, the Court held that the Tribunal correctly distinguished the facts of the case from *Diehlman v Dwelling-House Ins Co*, 78 Mich 141; 43 NW 1045 (1889), which allowed a deed that corrected a faulty description to have retroactive effect. Allowing the deeds to have retroactive effect would violate Michigan Land Title Standard 3.3 because it would change the name of the grantee. The deeds were not ambiguous and Michigan Land Title Standard 3.3 only allows for a corrective deed where there is an ambiguity. Petitioners



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also cited no published authority where the Tribunal allowed a party to use a corrective deed to qualify for a tax exemption.

Puppy's Cubby v City of Farmington Hills, unpublished per curiam opinion of the Court of Appeals, issued September 12, 2019 (Docket No. 347757).

Petitioner appealed from the Tribunal's decision that the subject property was properly uncapped. The subject property was owned by a married couple from 2013 to 2017. In March 2017, the couple quitclaimed the property to Petitioner, which was owned solely by one of the spouses. Petitioner argued that the conveyance did not uncap the property because it was between commonly controlled legal entities. It was undisputed that one person controlled Petitioner. However, the "entity" that owned the property prior to the conveyance was a tenancy by the entirety. Because it was owned as a tenancy by the entirety, both spouses shared control. Thus, the spouse who controlled Petitioner did not control the property prior to the conveyance. The Court declined to consider whether the spouses were a "legal entity" because resolution of that question was not necessary. In addition, the Court declined to address whether the case was improperly assigned to another judge on reconsideration and whether the Tribunal improperly considered untimely filed evidence because these issues were not preserved.

Galbraith v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued October 10, 2019 (Docket No. 345347).

Petitioners appealed the Final Opinion and Judgment upholding Respondent's denial of a request for a Principal Residence Exemption ("PRE") for 1996 through 2013. Petitioners purchased the subject property in 1995 and believed that they had a PRE based on the filing of a property transfer affidavit. Petitioners filed a PRE affidavit with the city of Sterling Heights in 2017. The city granted a PRE for 2014 onward, but had no record that Petitioner has claimed the exemption in 1995 and thus denied a rebate for 1996 through 2013. Petitioners submitted a form to Respondent requesting a PRE based on the "qualified error" that they have filed a timely PRE affidavit, but that the assessor failed to grant the exemption. Petitioner provided the December 22, 1995 property transfer affidavit, which was stamped as received by the city. They also provided a Homestead Exemption Update ("HEU") form, which they filled out when they purchased the subject. That form indicated that Petitioner, as buyers, could claim a PRE. This form had not been stamped as received. Following the hearing before a Tribunal hearing referee, the city notified Petitioners that the file for the property was temporarily missing. Petitioners argued that, when the city failed to record the PRE in 1995, a qualified error occurred. The Court reasoned that if the taxpayer cannot show that they fulfilled their statutory obligation to file a claim for a PRE, they cannot show



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that the PRE was not on the roll as a result of the local unit's error. The Court held that Petitioners failed to provide any evidence that they submitted a form claiming the exemption in 1995. Petitioners filed a property transfer affidavit with the city, but the property transfer affidavit did not indicate that Petitioners claimed a PRE. Although the HEU form did indicate that Petitioners claimed the exemption, there was no evidence that this form had been submitted to the city. Petitioners also argued that a logical inference arose that the city received the HEU form because it rescinded the prior owner's PRE. The Court explained that it was equally plausible that the city rescinded the PRE because it recorded the deed or received the property transfer affidavit, and thus rejected this argument. Petitioner last argued that the Tribunal should have applied equitable principles to estop Respondent from denying receipt of the HEU. Because the argument sounded in equity, and because it lacked equitable authority, the Tribunal did not err when it concluded that it lacked the authority to consider this argument. The Court declined to exercise its equitable powers because the city was not the respondent and there was no indication that the city induced Petitioners to believe facts that were prejudicial.

Federated Fin Co of America, Inc v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued October 17, 2019 (Docket No. 344181).

Plaintiff appealed from an order of the Court of Claims denying plaintiff's motion for summary disposition and granting defendant's motion for summary disposition. Plaintiff had asserted that it mailed its 2009 Michigan Business Tax ("MBT") return on November 15, 2010. Defendant asserted that the MBT return was not filed until December 15, 2014, and thus plaintiff's asserted credits were invalid because MCL 205.27a provided a four-year statute of limitations to claim credits. Plaintiff argued that the Court of Claims read MCL 205.27a as applying to claims for credits, when it only states that it applies to claims for refund. The Court reasoned that MCL 205.27a provides a four-year statute of limitations for the filing of a refund, and MCL 205.30(2) treats a claim for credit in excess of taxes due as a refund. Because of conflicting affidavits, the Court reversed the grant of summary disposition because a material question of fact remained regarding when plaintiff filed its 2009 MBT return.

Tax Tribunal Tidbits -

The Tribunal has discovered that some recent notices scheduling Small Claims telephonic hearings have omitted language on how to request an in-person hearing. If this section is omitted from your Notice, here is the omitted language:

In-Person Hearing Option: A party may submit a written request for an in-person hearing. The request must be submitted at **least 28 days** in advance of the hearing. If



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the request is timely, it will be granted. If granted, the hearing will be conducted in person and will likely be rescheduled for a later date

Poverty Exemption Guidelines: The Tribunal hears poverty exemption cases in Small Claims. Lately, it has been noticed that many local units of government have been negligent in not submitting copies of their poverty guidelines. **Please remember that when responding to a petition for a poverty exemption case, one needs to timely submit a copy of your adopted poverty guidelines.**

Best wishes,

A handwritten signature in blue ink, appearing to read "Steven Bieda".

Steven Bieda
Chairman, Michigan Tax Tribunal